

Application No. 10/674,971  
Amendment dated May 6, 2010  
Reply to Office Action of December 23, 2009

### **REMARKS**

Applicant amended independent claims 29 and 39 to further define Applicant's claimed invention. Support for the amendments to claims 29 and 39 may be found in the specification, for example, in the last paragraph on page 22, and Figs. 6B and 6C. No new matter has been added.

#### **Summary of the interview conducted April 7, 2010**

Applicant thanks the Examiner for the courtesy extended during the interview with Applicant's representatives on April 7, 2010. During the interview, Applicant's representatives discussed amending the claims to set forth that the inserting of the implant occurs after the forming of the opening. The Examiner agreed that such language appeared to distinguish over the applied references.

#### **Additional remarks in response to the Office Action of December 23, 2009**

Applicant's remarks submitted in the response dated March 23, 2010 are incorporated by reference herein. In the present amendment, Applicant amended independent claim 29 to recite that the insertion of the implant occurs "after the forming of the opening" across the height of the disc space and into a portion of each of the adjacent vertebral bodies. Applicant amended independent claim 39 to recite that the insertion of the first and second implants each occur "after the forming of the at least one opening" across the height of the disc space and into a portion of each of the adjacent vertebral bodies. Neither Steffee nor Schug, whether alone or in proper combination, teach or suggest forming an opening as recited in claims 29 and 39, and inserting an implant after formation of the opening.

Applicant submits that independent claims 29 and 39 are patentable and that claims 30-39, 40-59, and 62-68, dependent from one of independent claims 29 and 39, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

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In view of the foregoing remarks, it is respectfully submitted that the claims are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

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Dated: May 6, 2010

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